



# INDUSTRY CIRCULAR

## DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

Number: 77-5

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### ROTATION OF WINES AT RETAIL PREMISES

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars,  
Taxpaid Wine Bottling Houses, Importers, Wholesale Liquor  
Dealers, and Others Concerned:

Purpose. This circular is to inform industry members that ATF Ruling 77-4, which permits wine suppliers to rotate wines at retail dealer premises under certain conditions, will be published in the February issue of the Alcohol, Tobacco and Firearms Bulletin. The ruling will read substantially as follows:

The Bureau of Alcohol, Tobacco and Firearms has been asked to clarify permissible rotation of wine products as provided for in ATF Ruling 73-7, 1973 ATF C.B. 88, concerning the rearrangement by wine suppliers, of wine at retail liquor dealer premises.

The Bureau has previously ruled, in ATF Ruling 73-7, that a wine supplier may rotate his brands of wine at retail premises under certain conditions without violating the provisions of 27 U.S.C. 205(b). In that ruling, the Bureau recognized that the increase in the production and sale of wines, especially low alcoholic content wines having a comparatively short shelf life, as well as a substantial increase in the number of retail outlets handling wines, has necessitated determining whether, for quality control purposes, the foregoing activity could be permitted within the scope of controlling law.

The legal requirements regarding unfair competition and unlawful practices in sales of wines by producers or wholesalers are set out in 27 U.S.C. 205(b). Under these requirements it is considered, in effect, unlawful to induce retail dealers to purchase wines to the exclusion in whole or in part of wines sold by others (engaged in interstate or foreign commerce)

by reason of furnishing, selling, or giving service or other things of value. There is provision, however, for exceptions including regard for public health, the value of articles involved, and established trade practices not contrary to the public interest.

In order to further clarify the Bureau's position, it is held:

1. Permission to rotate such wines must be obtained from the retailer.
2. Only brands of wine sold by the supplier may be rotated.
3. No brands of wine may be returned to the wine supplier by the retailer other than under the exception found in the proviso to 27 U.S.C. 205(d), as further discussed in Revenue Ruling 54-509, 1954-2 C.B. 561 (Internal Revenue).

Within these constraints, it is further held that a wine supplier may, for the purpose of maintaining the freshness of his products:

1. Rearrange his own wine already stocked on shelves, in coolers, in cold boxes, and on floor displays by placing the oldest wine in front.
2. Rearrange and add to his own wine in the storage area assigned to him by the retailer.

However, the wine supplier may not:

1. Add wine to shelves, coolers, cold boxes and the like.
2. Transfer wine from one shelf, cooler, cold box, floor display, or storage area to another shelf, cooler, cold box, floor display, or storage area.
3. Alter or disturb in any way the wine sold by another wholesaler.
4. Mark or affix retail prices.

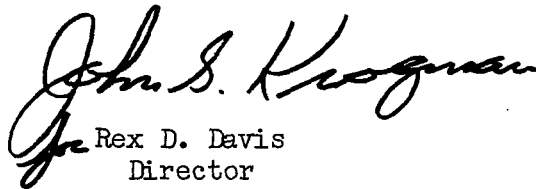
Suppliers who rotate wine under conditions other than those identified above as permissible are cautioned that such "rotation" will be viewed as the providing of a service to the retailer. If such service (inducement) results in exclusion in whole or in part of a competitor's products sold or offered for sale in interstate or foreign commerce, a violation of the Federal Alcohol Administration Act would ensue.

With regard to product shelf life and freshness considerations, suppliers are also reminded that the return of unsalable "old" wine in exchange for fresh wine is permissible, provided the exchange is for an equal quantity of the same type and brand of wine, varying only as to the container size.

This ruling shall not operate to exempt any person from the requirements of State law or regulations.

ATF Ruling 73-7, 1973 ATF C.B. 88, is superseded.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.

  
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Director